



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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January 4, 2016

Ms. Theresa Birlson
9520 Joilet Street
St. John, Indiana 46373

Re: Formal Complaint 15-FC-318; Alleged Violation of the Open Door Law by the Town of St. John, Town Council

Dear Ms. Birlson:

This advisory opinion is in response to your formal complaint alleging the Town of St. John Town Council ("Town") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Town has responded via Counsel, Mr. David Austgen, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 1, 2015.

BACKGROUND

Your complaint dated November 22, 2015 alleges the Town of St. John Town Council violated the Open Door Law by providing improper notice of town meetings.

On November 18, 2015, you observed a notice for an executive session to be held on November 19, 2015 which was posted at the town hall. You noted, however, there was no notice of a public meeting. On November 19, 2015 the Clerk-Treasurer stated that an agenda was posted. You contend you then observed notices and agenda posted for additional meetings less than 12 hours in advance of the meetings.

On December 21, 2015 the Town responded. Counsel notes that under Ind. Code § 5-14-1.5-4(a), agenda for meetings must be posted prior to the meeting themselves. A specific timeframe is not contemplated. Under Ind. Code § 5-14-1.5-5(a), public notice for meetings must be 48 hours in advance of the meeting. The Town contends the notice of the rescheduled regular public meeting was sent to the newspaper for publication before the 48-hour timeframe commenced.



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ANALYSIS

It is the intent of the Open Door Law (ODL) the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. See Ind. Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. See Ind. Code § 5-14-1.5-3(a).

Based on the information provided by both parties, it appears as if there was a regularly scheduled meeting on the fourth Thursday of every month at 7:00 p.m., for at least three (3) public governing bodies. This was properly posted in January 2015 and meets the requirements set forth in Ind. Code § 5-14-1.5-5(c) ('notice of regular meetings need be given only once each year'). At some point it was determined that, due to the holiday season, these meetings would need to be re-scheduled. To satisfy notice requirements, the Town then published the meetings in the newspaper outlining the changes.

Pursuant to Ind. Code § 5-14-1.5-5(b)(1), public notice shall be given by the governing body of a public agency as follows:

(1) The governing body of a public agency shall give public notice by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held.

The first issue in this situation appears to be the lack of the rescheduled notice at the Town Hall. Newspaper publication is not always a condition precedent to a public meeting and publication alone is not sufficient to satisfy notice requirements. There must be actual notice posted at the place of the meeting in a conspicuous location in the building where the meeting is being held 48 hours prior to the meeting. From the information provided, it appears as if this was not done. Some public business requires additional notice sent to a paper of local circulation, however, this does not relieve the agency of posting notice at the actual location of the building *in addition to* publishing the notice in the paper.

As for the agendas, the Town is correct that agendas are not required to be posted 48 hours in advance of the meeting, but only prior to (or contemporaneous with) commencement per Ind. Code § 5-14-1.5-4. The public has the right to observe and

record a public meeting, but does not necessarily have the right to prepare questions and comments prior to the meeting based upon a proposed agenda. In fact, for most regular public meetings, the public is not entitled to a public comment forum at all. Any invitation to comment during a public meeting is a courtesy extended by a governing body and not a matter of right under the Open Door Law.



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CONCLUSION

Based on the foregoing, it is the determination of the Office of the Public Access Counselor the Town of St. John violated the Open Door Law by failing to post notice of a rescheduled meeting at the location of said meeting, but did not violate the law in regard to posting of agendas.

Regards,

A handwritten signature in black ink, appearing to read "LHB", is written over a horizontal line.

Luke H. Britt
Public Access Counselor

Cc: Mr. David Austgen, Esq.